

Amendment No. 1 to SB3445

Cohen  
Signature of Sponsor

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 3445**

**House Bill No. 3476\***

By deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Charitable Gaming Operators Licensing Law".

SECTION 2. Tennessee Code Annotated, Title 48, Chapter 101, is amended by adding the following language as a new part:

Section 48-101-801. As used in this part, unless the context otherwise requires:

(1) "§501(c)(3) organization" means an entity which is exempt from federal income taxation under §501(a) of the Internal Revenue Code as an organization described in §501(c)(3);

(2) "Annual event" means an event:

(A) Authorized by two-thirds vote of all members elected to each house of the general assembly;

(B) Operated for the benefit of a §501(c)(3) organization located in Tennessee;

(C) Conducted with a type of lottery game;

(D) Conducted on an event date; and

(E) Conducted at a location where the organization maintains a physical presence;

(3) "Annual event operator" means a person who, for financial or other consideration, operates annual events for §501(c)(3) organizations;

(4) "Annual event operator's license" means the license issued by the secretary to an annual event operator;

(5) "Operate" means:

(A) To run or control, directly or indirectly, the functioning of an annual event;

(B) To bring about a desired or proper effect, including, but not limited to, on-site or off-site advertising, marketing, planning, consulting or other similar services offered as assistance to a §501(c)(3) organization in conducting an annual event activity, but expressly excluding advertising, marketing, planning and consulting by a person deriving twenty-five percent (25%) or less of annual gross income from all such activities;

(C) To conduct the affairs of, including, but not limited to, on-site or off-site management;

(D) To supply necessary gambling devices, including, but not limited to, selling, leasing, renting or otherwise contracting for equipment associated with a type of lottery game as defined in title 3, chapter 17, part 1; or

(E) To supply necessary gambling records, including, but not limited to, tickets, shares, chances or similar records, but expressly excluding the printing of such records by a printer deriving twenty-five percent (25%) or less of annual gross income from the printing of such gambling records.

(6) "Person" means any individual, organization, trust, foundation, group, association, partnership, limited liability company, corporation, society, or any combination of them, or any other entity; and

(7) "Secretary" means the secretary of state or the secretary of state's authorized representative.

Section 48-101-802.

(a) No §501(c)(3) organization shall employ, hire or contract with any person to operate an annual event for the benefit of such organization unless

such person, and all subcontractors, possess valid annual event operator's licenses in accordance with the provisions of this part.

(b) No person shall operate, or propose to operate, for financial or other consideration an annual event for a §501(c)(3) organization unless such person, and all subcontractors, possess valid annual event operator's licenses in accordance with the provisions of this part.

(c) No person shall contract, or otherwise be employed, to operate an annual event for a sum greater than forty percent (40%) of the estimated gross proceeds of the annual event; provided that the aggregate total of all contracts to operate an annual event shall be no more than forty percent (40%) of estimated gross proceeds of the annual event. Upon completion of an annual event, no person shall receive a bonus or other compensation for duties associated with such completed annual event if such additional compensation, by itself or in the aggregate, would exceed forty percent (40%) of the gross proceeds of the annual event.

(d) A violation of subsection (b) is a Class D felony; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000).

(e) Notwithstanding any provision of law to the contrary, any person who violates subsection (a) shall be permanently disqualified from filing an annual event application pursuant to title 3, chapter 17, part 1.

(f)

(1) Any person who is convicted of a violation of subsection (b) shall be permanently disqualified from holding an annual event operator's license in Tennessee.

(2) Any person who violates the provisions of subsection (c) shall be permanently disqualified from holding an annual event operator's license in Tennessee.

Section 48-101-803.

(a) Any person who, for financial or other consideration, operates, or proposes to operate, annual events for §501(c)(3) organizations shall file an application with the secretary for an annual event operator's license.

(b)

(1) An application for an annual event operator's license shall be in writing under oath or affirmation in the form prescribed by the secretary. The secretary is encouraged to utilize, to every extent possible, web-based forms and procedures for annual event applications.

(2) An application for an annual event operator's license shall contain such information as the secretary may require, including, but not limited to, the applicant's full name, permanent address, telephone number, social security number, taxpayer identification number, date of birth, any temporary local address and telephone number and any felony or misdemeanor convictions in this state or in another jurisdiction.

(3) An annual event application shall be accompanied, at the time of filing, with a waiver of privacy rights, on a form provided by the secretary, which will allow posting of documents on the secretary's website and inspection by any member of the public of any documents filed pursuant to the provisions of this part.

(4) An application that contains false, misleading, deceptive or incomplete information or documents shall not be considered sufficient or complete and any such application shall be summarily denied.

(c) No person shall be issued an annual event operator's license who has been convicted of any felony, any violation of the provisions of this part, title 39, chapter 14, part 1, §39-16-702, 39-16-703, title 39, chapter 17 parts 5 or 6 or a similar offense in another jurisdiction.

(d) No person shall be issued an annual event operator's license who has been denied a license, permit or similar authorization to operate or conduct charitable, or for-profit, gaming in another jurisdiction.

(e) No person shall be issued an annual event operator's license who has had a license, permit or similar authorization to operate or conduct charitable, or for-profit, gaming in another jurisdiction suspended or revoked.

(f) The secretary shall issue an annual event operator's license to qualified applicants upon payment of all requisite fees and satisfaction of all bonding requirements. Such licenses shall be valid from the date of issuance to the next June 30 and, if renewed, for a twelve-month period beginning July 1 and ending June 30 unless sooner suspended, canceled or revoked pursuant to rules and regulations established by the secretary.

(g) Upon successful application and prior to issuance of an annual event operator's license, an applicant shall file a bond in the sum of fifty thousand dollars (\$50,000) with the secretary. The bond shall name the applicant as the principal obligor with one (1) or more sureties, satisfactory to the secretary, whose liability in the aggregate as such sureties will at least equal that sum. It shall be payable to the state of Tennessee for the use of the secretary and any person who may have a cause of action against the obligor of the bond for any violations under this part or for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of charitable gaming activities. An individual, partnership or corporation, which is an annual event operator, may file a consolidated bond on behalf of all its members, officers and employees. The bond shall continue in effect so long as the applicant's annual event operator's license is in good standing.

(h) The annual event operator, in the case of a corporation, partnership or other business entity or an operator with multiple partners, associates or employees, shall bear the responsibility of the licensure and bonding of all of the

annual event operator's partners, associates and employees who work in direct conjunction with an annual event. Every such person shall make application to the secretary for licensure as an annual event operator in accordance with the provisions of this part and shall maintain a valid annual event operator's license prior to operating, or proposing to operate, an annual event for a §501(c)(3) organization.

(i) Annual event operator's licenses shall be renewable annually upon compliance with all provisions of this part, title 3, chapter 17, part 1 and title 39, chapter 17, part 6 unless sooner suspended, canceled or revoked pursuant to the rules and regulations promulgated by the secretary.

Section 48-101-804. At the time of initial application for an annual event operator's license, and at the time of any subsequent renewals, the applicant shall submit a finger print sample to the secretary in a manner prescribed by the secretary pursuant to rules and regulations. The secretary shall submit the names and samples to the Tennessee Bureau of Investigation. The Tennessee Bureau of Investigation, pursuant to §38-6-109, shall conduct a criminal history records check on all such persons applying for an annual event operator's license. The Tennessee Bureau of Investigation may contract with the Federal Bureau of Investigation, other law enforcement agencies or any other legally authorized entity to assist in such investigation. The applicant, or annual event operator seeking renewal, shall pay the actual cost of such records check in addition to all other fees required to be submitted pursuant to the provisions of this part. The secretary shall review all criminal history records checks for compliance with the provisions of this part prior to the issuance of an annual event operator's license.

Section 48-101-805.

(a) The application fee for an annual event operator's license is fifty dollars (\$50.00).

(b) Upon successful application, the fee for an annual event operator's license is one hundred dollars (\$100).

(c) The renewal fee for an annual event operator's license is one hundred dollars (\$100).

(d) Application and licensing fees paid pursuant to the provisions of this part are non-refundable.

(e) Fees paid for an annual event operator's license shall not be subject to a pro rata reduction for any partial licensing period.

(f) Fees collected under the provisions of this part shall be used by the secretary to defray the cost of administering this part.

Section 48-101-806. The secretary shall maintain a list of all persons with annual event operator's licenses in good standing on the website of the secretary. Such list shall included the name of the annual event operator, the address of the annual event operator, the telephone number of the annual event operator and any other information the secretary deems appropriate.

Section 48-101-807.

(a) The provisions of this part shall not apply to the operation of annual events by a bona fide director, officer, regular employee, member or volunteer of a §501(c)(3) organization who:

(1) Operates an authorized annual event for the organization of which the person is an director, officer, regular employee, member or volunteer;

(2) Operates only one (1) such annual event in any twelve-month period beginning on July 1 and ending June 30 each year for any §501(c)(3) organization; and

(3) If applicable, receives financial or other consideration for their duties associated with an annual event in an amount not to exceed forty percent (40%) of the estimated gross proceeds of an annual event to be

conducted by the §501(c)(3) organization. Upon completion an annual event, no person shall receive a bonus or other compensation for duties associated with such completed annual event if such additional compensation, by itself or in the aggregate, would exceed forty percent (40%) of the gross proceeds of the annual event. Nothing in this subdivision shall be construed as increasing the overall percentage of funds that may be expended by a §501(c)(3) organization on contracts to persons operating an annual event whether such persons are licensed in accordance with the provisions of this part or exempt from such licensure requirements in accordance with the provisions of this section.

(b) As used in this section, "regular employee" means an individual to whom a §501(c)(3) organization pays wages and for whom the §501(c)(3) organization must withhold federal income tax, must withhold and pay employer social security and Medicare tax, must issue an Internal Revenue Service Form W-2, and must report wages to the Internal Revenue Service on Form 941.

(c)

(1) Any §501(c)(3) organization that violates the provisions of this section shall be disqualified from filing an annual event application pursuant to title 3, chapter 17, part 1 for a period of five (5) years.

(2) Any person who violates the provisions of this section shall not operate an annual event for any §501(c)(3) organization in Tennessee and shall be permanently disqualified from holding an annual event operator's license in Tennessee.

Section 48-101-808. The secretary may assess a civil penalty against an annual event operator not to exceed fifty thousand dollars (\$50,000) for a violation of this part. Any hearing on the imposition of any fine pursuant to the provisions of this section shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.



SECTION 3. The charitable gaming oversight committee shall periodically review and evaluate the charitable gaming operators licensing law.

SECTION 4. The secretary of state is authorized to promulgate rules and regulations as the secretary of state may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 7. This act shall take effect July 1, 2004, the public welfare requiring it and shall apply to the operation of annual events authorized by the general assembly to be conducted on and after July 1, 2005